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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 09/838,043 | 04/18/2001 | Donald J. Mischo | MISCHO-2 | 2963 |
| 20606 | 7590 | 11/06/2003 | EXAMINER | |
| KEITH FRANTZ 401 WEST STATE STREET SUITE 200 ROCKFORD, IL 61101 | | | LECHERT JR, STEPHEN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1732 | |

DATE MAILED: 11/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/838,043

Applicant(s)

MISCHO, DONALD J.

Examiner

Stephen J. Lechert Jr.

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments of May 27, 2003 have been fully and carefully considered and have been found persuasive. Accordingly, the rejection under obviousness over Gehrke et al. has been withdrawn with respect to the method claims. Gehrke et al. is still applicable to the apparatus claims and will be restated below. Applicant's substitute specification has been entered and does not contain any new matter. Applicant's amended claims obviates the 112 second paragraph rejection, accordingly, the rejection is withdrawn. Claims 1-3 and claims 5-9 formerly indicated as being free of the prior is withdrawn subject to the newly found prior art. A new ground of rejection follows:

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 10 and 17-18 remain rejected under 35 U.S.C. 102(b) as being anticipated by Gehrke et al. for reasons of record in Paper No. 4, paragraph 6.

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Petermeier.

Petermeier teaches grinding an aggregate asphalt mixture, heating the aggregate asphalt mixture, loading the ground mixture into a mold and compressing the

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mixture into a desired shape. With respect to applicant's extrusion step, it is not considered to be a shaping step it is step but rather a mixing step which is anticipated by Petermeier because Petermeier prior to molding mixes the ground mixture in a rotating drum which is then put into a mold. This step is equivalent to applicant's extruding step.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 4-9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehrke et al. in combination with Petermeier.

Gehrke et al. teaches the inventions substantially as claimed. Gehrke et al. teaches grinding an aggregate asphalt mixture, heating the mixture between 130-150°F, extruding the heated mixture and cutting the extruded mixture to form shaped parts.

However Gehrke et al. does not teach applicant's specific temperature range of 200-300°F.

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Petermeier teaches a grinding and aggregate asphalt mixture and heating the mixture to a temperature between 212-275°F which is within applicant's heating range. The heated ground aggregate is then compression molded into an article.

It would have been obvious from reading either Gehrke et al. or Petermeier to make a shaped article from aggregate asphalt. Both references teach grinding aggregate asphalt, heating the ground asphalt and then shaping. In Gehrke the temperatures are lower than applicant's preferred heating temperatures. Petermeier teaches higher temperatures can be used and are within the range taught by applicant thus providing a suggestion or motivation to one having ordinary skill in the art the time was made to adjust or modify the temperature range which provides best results for compaction or shaping or molding or extruding thus rendering applicant's claims as a whole obvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Lechert Jr. whose telephone number is 703-305-6156. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on 703-305-5493. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


STEPHEN J. LECHERT, JR.
PRIMARY EXAMINER